

VZCZCXRO2951
RR RUEHDU RUEHMR RUEHRN
DE RUEHSB #0942/01 2911202
ZNY CCCCC ZZH
R 181202Z OCT 07
FM AMEMBASSY HARARE
TO RUEHC/SECSTATE WASHDC 2038
INFO RUCNSAD/SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
RUEHUJA/AMEMBASSY ABUJA 1735
RUEHAR/AMEMBASSY ACCRA 1610
RUEHDS/AMEMBASSY ADDIS ABABA 1739
RUEHRL/AMEMBASSY BERLIN 0376
RUEHBY/AMEMBASSY CANBERRA 1019
RUEHDK/AMEMBASSY DAKAR 1368
RUEHKM/AMEMBASSY KAMPALA 1796
RUEHNR/AMEMBASSY NAIROBI 4225
RHMFIISS/EUCOM POLAD VAIHINGEN GE
RUEHGV/USMISSION GENEVA 0860
RUFOADA/JAC MOLESWORTH RAF MOLESWORTH UK
RHEFDIA/DIA WASHDC
RHEHAAA/NSC WASHDC

C O N F I D E N T I A L SECTION 01 OF 03 HARARE 000942

SIPDIS

SIPDIS

AF/S FOR S.HILL
ADDIS ABABA FOR USAU
ADDIS ABABA FOR ACSS
STATE PASS TO USAID FOR E.LOKEN AND L.DOBINS
STATE PASS TO NSC FOR SENIOR AFRICA DIRECTOR B.PITTMAN

E.O. 12958: DECL: 07/09/2012
TAGS: PHUM PGOV ECON EAGR EINV ZI
SUBJECT: FINAL PUSH ON LAND SEIZURES

REF: A) HARARE 183 B) 2006 HARARE 1492

Classified By: Polecon chief Glenn Warren under 1.4 d

Summary

¶11. (U) The Government of Zimbabwe, led by Minister of State for Security and Minister of Lands, Land Reform, and Resettlement Didymus Mutasa, appears intent on evicting the last approximately 350 white farmers (out of approximately 4,500 farmers when land seizures began in 2000). In the past two months the government has stepped up eviction notices, arrests, and outright seizures. The farmers have been challenging the GOZ's actions on constitutional grounds in the Supreme Court and in the SADC Tribunal. Also on the legal front, a decision is expected soon from the International Centre for the Settlement of Investment Disputes (ICSID) in a claim for compensation brought by 12 Dutch farmers under the Netherland's Bilateral Investment Promotion and Protection Agreement (BIPPA) with Zimbabwe.

¶12. (U) The remaining farmers have significant support among high-ranking ZANU-PF officials other than Mutasa and from local officials. With minimal chances of success in the courts, their best hope of survival appears to be through political intervention. So far, President Mugabe has not articulated a government policy.

Recent Background

¶13. (U) According to the Commercial Farmers' Union (CFU) (Ref B), the majority of white commercial farmers still on the land have complied with the GOZ's criteria to continue farming: they have downsized and offered land for resettlement, and coexisted with land settlers. In the past two months, there have been renewed and intensified efforts

to evict many of the approximately 350 remaining farmers (out of approximately 4,500 on the land when seizures began in 2000). The CFU has documented about 50 incidents since the end of August where farms have been invaded, eviction notices served, arrests made, or farms visited in anticipation of future action. Mutasa has publicly announced his intention to leave no farms in white hands.

¶4. (SBU) David Drury, an attorney for many of the farmers, told us the legal basis for action against the farmers is Constitutional Amendment 17, enacted in September 2005, and the Gazetted Land (Consequential Provisions) Act (the Act) passed into law on December 20, 2006. Amendment 17 essentially makes all farm land subject to acquisition by the State and specifically precludes legal challenge by anyone claiming an interest in such land. The Act requires all farmers not in possession of an official offer letter, lease, or permit to cease to hold or use the land as of February 3, ¶2007. Under a government moratorium introduced in January, farmers were given temporary extensions to continue growing crops.

¶5. (SBU) According to Drury, under the moratorium the government was required to analyze the crops on a particular farm and grant extensions of specific periods to allow a gradual "wind down," to include harvesting and sale of crops.

As a practical matter, the government in almost all cases took no affirmative action to define the period of extension.

Farmers were encouraged by local officials and traditional leaders, who recognized their value both in terms of production and local employment, to continue farming; most carried on with business as usual. Drury commented that

HARARE 00000942 002 OF 003

Mutasa's statement and recent actions against farmers had brought the issue of white farmers once again to a head.

The Campbell Case

¶6. (SBU) Michael Campbell, a white farmer whose farm was identified for takeover by ZANU-PF spokesman Nathaniel Shamuyarira, filed a constitutional challenge to Amendment 17 with the Supreme Court in April 2006. According to Drury, who is representing Campbell, there are three core arguments:
--The provision of Article 17 that extinguishes the ability to go to court to present a legal challenge to the State's acquisition of land is antithetical to the essence of the constitution which recognizes fundamental democratic rights and the rule of law; it also violates the doctrine of separation of powers;
--The constitution requires compensation for improvements in cases of acquired land. Since the government has not complied with this requirement in any case of acquired land, the entire acquisition process under Amendment 17 is flawed;
--Land acquisition under Article 17 is racially discriminatory. Drury said he had surveyed other land acquisition cases in the Chegutu district where Campbell's farm is located. There were no cases of appropriation of black-owned farms.

¶7. (SBU) Drury said the Campbell case was argued before the Supreme Court in April 2007. In August, in the absence of a decision, he wrote to the Court asking for one. He emphasized the importance of the issues--if he was correct on the law, there were continuing constitutional violations; if the Court thought he was wrong, a decision would represent the exhaustion of local remedies to permit an appeal to the SADC Tribunal in Windhoek. In October, with still no decision from the Court, Drury appealed to the Tribunal and alleged that the failure of the Supreme Court to act constituted an exhaustion of remedies. He admitted to us that a land case involving white rights was not ideal for the relatively young Tribunal's first case and he was not hopeful of a positive result.

Current Eviction Cases

¶8. (SBU) Drury is also representing a number of farmers from Chegutu who have been served with eviction notices pursuant to the Act. The eviction notices were upheld by a local magistrate and Drury is now appealing, on the same constitutional grounds as Campbell, to the Supreme Court. He was not optimistic when talking with us. He pointed out that six of the seven Supreme Court justices were beneficiaries of farms seized from white farmers.

¶9. (U) In a rare win for white farmers, a High Court judge ruled in February that a brigadier-general who invaded the farm of Charles Lock had not complied with the Act and ordered him off the land. When he failed to comply, another High Court judge in September held him in contempt.

The Dutch BIPPA Case

¶10. (SBU) In April 2005, 12 Dutch farmers who had been evicted from 15 commercial farms filed a claim in the ICSID, based on the Netherland's BIPPA with Zimbabwe. According to Boyd Carr, a Zimbabwean attorney for the farmers, the GOZ has admitted liability--it acknowledges the BIPPA and says the seizures were a result of spontaneous uprisings--and has

HARARE 00000942 003 OF 003

offered to return the farms. The farmers--no longer in Zimbabwe--are not interested in restitution but want compensation. They are seeking 36 million Euros which includes the value of their properties and interest. The GOZ has not contested the amount of compensation, but says that it will pay when able. (Comment. The GOZ has paid US\$ 225,000 to ICSID, its share of costs. An ICSID judgment would presumably enable the farmers to attach Zimbabwe assets, such as planes, outside of the country. In May and June of this year, the GOZ paid off a US\$ 44 million debt to the U.S. Export Bank to avoid this very problem. End Comment.)

¶11. (SBU) Boyd told us that the BIPPA hearing is to take place in Paris October 30 through November 1. He noted that there are about 100 former Dutch farmers awaiting the outcome of this proceeding and who could potentially file suit. A much smaller number of former German and Danish farmers have potential claims; their countries, according to Boyd, also have valid BIPPA with Zimbabwe.

Politics Trumps Legality

¶12. (C) While Mutasa has publicly called for the eviction of all white farmers, the GOZ's two vice presidents, Joice Mujuru and Joseph Msika, acknowledging the importance of the remaining farmers to the country's agricultural production, have publicly responded that evictions should stop. Midlands governor Cephas Msipa told us earlier this year (Ref A) that he had lobbied Msika to prevent the takeover of dairy farms in his province which provide the bulk of dairy products in the country. Msipa also stated Midlands' black farmers oppose further evictions; they are receiving both technical and material support from the white farmers. And the CFU has told us many of its farmers have the support of local officials and traditional leaders.

¶13. (U) According to CFU officials, the opposition to Mutasa on the part of other high-ranking ZANU-PF officials has slowed the process against white farmers. But the farmers' fate depends to a large extent on whom they know. A connection to Msika, for example, or in some cases even

Mutasa, can result in cessation of an eviction process.

Comment

¶14. (C) Continuing farm evictions are clearly inimical to what is left of the economic health of the country. The fact evictions are allowed to continue is yet another sign of a misdirected economic policy. And the fact that there is a continuing schism within ZANU-PF on such an important issue is yet another sign of the disarray within the party itself. Whether through design (to permit continuing patronage) or through inattention, President Mugabe has not intervened to articulate a government policy.

DHANANI